IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No.820 of 2006

Date of Decision: November 29, 2006

Sanjiv Kumar

...Petitioner

VERSUS

State of Haryana & another

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

PRESENT: Mr.Malkeet Singh Balianwali, Advocate,
for the petitioner.

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This revision petition is directed against the order of discharge for offences under Sections 202/217 IPC in respect of respondent, who is a doctor and was working as Medical Officer, Government Hospital, Sardoolgarh.

Usha Rani @ Urvashi wife of Dharambir Singh died an unnatural death on 22.7.2004. The complainant, who is brother of deceased Usha Rani @ Urvashi, lodged a complaint against her husband and his relations under Sections 498-A, 304-B, 328, 406 and 34 IPC. On 22.7.2004, Usha Rani was got admitted in Government Hospital, Sardoolgarh and was attended to by Dr.Sohan Lal posted there as Medical Officer. The said doctor, after giving some treatment to the deceased, advised the family to shift her to Patiala Nursing Home at Sirsa where she was admitted at 10.00 P.M. She was declared brought dead. Allegation is that she had been poisoned or was forced

to take poison on account of harassment by the accused and his family members. Dr.Sohan Lal was accused of not intentionally referring her to some specialised institutions for better treatment and thus failing to perform his duties. On the basis of these allegations made against the family of the accused as well as against the Medical Officer, the challan was presented. It is urged that Dr.Sohan Lal was duty bound to refer the deceased to some specialised institution for better treatment and to inform the police regarding the commission of offence and he failed to do so and hence was responsible for the offence alleged against him. Dr.Sohan Lal being doctor working at Government Hospital as a public servant and as such he could have been ordered to be prosecuted only after obtaining requisite sanction under Section 197 Cr.P.C. The prosecution had not obtained any sanction in this regard. Accordingly, a prayer was made for discharging accused Dr.Sohan Lal. After making reference to few judgments, the court found that the sanction was essential in this case and accordingly the doctor was ordered to be discharged. This is under challenge in the present revision.

The only submission made before me is that sanction was not needed in this case as the circumstances in this case indicated intention on the part of the doctor not to report the matter to police or otherwise failing to refer the deceased for specialised treatment, which may make him liable under Section 202 IPC. It was, however, conceded that no direct evidence was available to infer such intention on the part of the doctor as urged and this is to be discerned from the circumstances of the case. No particular

circumstance was pointed out by the learned counsel. It cannot be disputed that Dr.Sohan Lal had acted in his capacity as a doctor while treating the deceased and he is a public servant. For his prosecution, sanction under Section 197 Cr.P.C. is legally essential. It is well settled that it is not the duty, which requires examination so much as the act because the official act can be performed both in discharge of official duty as well as in dereliction of it. Protection is available only when the alleged act done by public servant is reasonably connected with discharge of his official duty. It should not be merely a clock for doing an objectionable act. It has been so held in Bakhshish Singh Brar v. Smt.Gurmej Kaur and another, JT 1987 (4) S.C.190 and Rakesh Kumar Mishra v. The State of Bihar and Ors. JT 2006(1) SC 1. Thus lested, it is clear that the petitioner had acted in discharge of his official duty and it was connected with official duty. It is this act which requires examination and not the duty on his part as has been made out by the counsel for the petitioner. A criminal intend cannot be attributed to a doctor, who happens to attend to a patient simply on the ground that he did not inform the police or had not referred the patient for specialised treatment. Even if it be a duty on his part (though nothing was shown in this regard) that would not be material for deciding if sanction was needed or not. It is the `act' of attending to patient on the part of the petitioner which admittedly was official. Sanction under Section 197 Cr.P.C. as such cannot be wished away in this case. There is even no material placed on record to show that the deceased needed any specialised treatment or that the respondent doctor had intentionally omitted to give information of offence or that he was bound to give any such

information to attract the culpable provisions of Section 202 IPC. Rather the learned counsel conceded that in the case Dr.(Smt.) K.K.Patnayak and others Vs. State of M.P., 1999 Cri.L.J.4911, it was held that failure to give information (6 days in this case) regarding admission of patient would not itself amount to offence under Section 201 IPC and such failure does not amount to offence under Section 202 IPC unless it is shown that doctor was under duty bound to give such information. Again, for seeing the applicability duty would not be relevant but the `act' meaning that for charging doctor even if he had any such duty, sanction would be essential.

I do not find any infirmity in order discharging the accused Dr.Sohan Lal. No case for interference is made out.

The present revision petition is accordingly dismissed.

November 29, 2006 (RANJIT SINGH)
ramesh JUDGE

Whether referred to reporter? Yes